

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ANTHONY BROWN,

Petitioner,

- against -

WOODS,

Respondent.

JOHN G. KOELTL, District Judge:

The petitioner, Anthony Brown, filed this motion to stay his habeas petition, seeking an opportunity to exhaust two motions in New York State Supreme Court. The petitioner filed the motions pursuant to New York Criminal Procedure Law Sections 440.10-440.20 to vacate his conviction of Robbery in the Second Degree. Specifically, the petitioner argued that the court improperly allowed hearsay testimony at his trial, that his Confrontation Clause rights were violated by the introduction of a 911 call against him without requiring the caller to appear, and that he did not receive adequate notice that prior identification testimony would be used against him pursuant to New York Criminal Procedure Law Section 710.30.

The New York State Supreme Court has denied all three of these claims by orders dated June 26, 2008 and April 10, 2009. Therefore, there is no basis to stay the habeas petition to allow the petitioner to exhaust these claims. Moreover, in order to grant a motion to stay to allow for exhaustion of claims in state

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MEMORANDUM OPINION
AND ORDER

court, the petitioner must demonstrate that: (1) good cause exists for failing to exhaust his claims first in state court, (2) the claims are potentially meritorious, and (3) the petitioner did not intentionally engage in dilatory tactics. See Rhines v. Weber, 544 U.S. 269, 277-78 (2005). In this case, no good cause was shown. Indeed, the New York State Supreme Court has now found that each of the petitioner's claims could have been raised on direct appeal and therefore the petitioner could not raise them on a collateral motion. Because there is no showing of good cause for having failed to raise the claims previously, there is no basis for the petitioner's motion to stay.

There has been no response to the petitioner's habeas petition. Even though it appears that the petitioner may not raise any additional claims, if the petitioner wishes to include any new claims, he may file an amended habeas petition by **January 15, 2010**. The respondent may reply to the amended habeas petition with any argument against these claims, including that they are untimely and procedurally barred. The response to either the current petition or any amended petition is due by **March 19, 2010**. The petitioner may reply by **April 30, 2010**.

SO ORDERED.

Dated: New York, New York
December 7, 2009

John G. Koeltl
United States District Judge